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In the Supreme Court of the United States

OCTOBER TERM, 1976

ALBERTS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1–2) is not reported. The decision and order of the National Labor Relations Board (Pet. App. 3–10) are reported at 213 NLRB 686.[1]

JURISDICTION

The judgment of the court of appeals was entered on September 28, 1976. The petition for a writ of certiorari was filed on December 13, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

[1] The decision of the Administrative Law Judge is set forth at Add., *infra*, pp. 15–71.

QUESTIONS PRESENTED

1. Whether the Board abused its discretion in concluding that employees in a single store of a chain of retail outlets constituted an appropriate bargaining unit.

2. Whether the Board correctly determined that the Company's no-solicitation rule violated Section 8(a)(1) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act ("Act"), as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*, are set forth at Pet. 2–3.

STATEMENT

Petitioner Alberts, Inc. (the "Company"),[2] operates a chain of 48 women's clothing stores in Michigan, Ohio and Illinois. Twenty-four of the stores, including a store in the Universal Mall, are located in the Detroit metropolitan area (Add., *infra,* pp. 17–18).

In early 1973, the Union[3] began a campaign to organize employees in the Company's stores in the

[2] Detroit Shoe Company operates under lease argeement with Alberts, Inc., retail shoe departments in at least 10 of Alberts' 24 stores in the Detroit metropolitan area, including the store in the Universal Mall (Add., *infra.*, p. 18). The Board found that Alberts and Detroit Shoe are joint employers in the stores in which Detroit Shoe operates shoe departments (see *id.* at 21–23), and Alberts does not here seek review of that determination. References herein to the "Company" include Detroit Shoe.

[3] Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO.

Detroit metropolitan area. Pursuant to a representation petition filed by the Union relating to the Company's Universal Mall store, the Board's Regional Director found that a unit comprised of the employees at that store was appropriate (Pet. App. 27–36).[4] The Board denied the Company's request for review of the Regional Director's unit determination on the ground that it raised no substantial issues warranting such review (see Add., *infra,* p. 19). A representation election was conducted on April 10, 1973, resulting in certification of the Union as the exclusive bargaining agent for the Company's employees at the Universal Mall store (*id.* at 20).[5]

The Union subsequently filed a complaint with the Board, charging that the Company had committed a series of unfair labor practices. Following a hearing on those charges, the Board found that the Company

[4] The Regional Director defined the unit as follows (Pet. App. 33–34):

"All full-time and regular part-time selling and non-selling employees employed by the [Company] at its [Universal Mall] Store, including employees of Detroit Shoe Company; but excluding professional employees, guards and supervisors as defined in the Act."

The Regional Director also determined, in a separate representation proceeding, that a unit comprised of employees at the Company's General Motors Building store was appropriate (*id.* at 11–26).

[5] The Company filed objections to the election claiming, *inter alia*, that the election had been tainted by an alleged promise by the Union to waive initiation fees for unit members. The Regional Director found the Company's objections to the election to be without merit, and the Board denied the Company's request for review (see Add., *infra*, p. 20).

had violated Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), by promulgating and enforcing an invalid no-solicitation rule. It further found that the Company had violated Section 8(a)(1) and (5) of the Act by (1) changing working conditions without consulting or bargaining with the Union, the certified representative of the affected employees, and (2) refusing to bargain with, and refusing to furnish data concerning unit employees to, the Union (Pet. App. 3–10; Add., *infra,* pp. 60–62),[6] The Board ordered the Company, *inter alia,* to rescind its unlawful no-solicitation rule and to bargain with the Union upon request (Pet. App. 9–10; Add., *infra,* pp. 62–68).

The court of appeals upheld the Board's decision and enforced its order (Pet. App. 1–2).

ARGUMENT

The issues raised in the petition relate solely to the validity of the Board's unit determination and to the lawfulness of the Company's no-solicitation rule. Resolution of those issues depends upon the applica-

[6] The Board also found that the Company had violated Section 8(a)(1) of the Act by (1) granting wage increases to employees for the purpose of discouraging organizational activities; (2) coercively interrogating, threatening, promising benefits and soliciting employees to submit grievances to the Company rather than to the Union in order to discourage union activities; (3) engaging in surveillance of a union meeting and creating the impression that such surveillance would continue. In addition, the Board found that the Company had violated Section 8(a)(1) and (3) of the Act by discharging an employee because of her union activities (Pet. App. 3–10; Add., *infra*, pp. 60–62).

tion of settled law to the facts of this case. Consequently, further review by this Court is not warranted. The court of appeals correctly held, in any event, that there is substantial evidence in the record to support, and a rational basis for, the Board's decision.

1. Section 9(b) of the Act, 29 U.S.C. 159(b), empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." The Act thus vests in the Board broad discretion in determining what constitutes an appropriate unit. *E.g., Packard Motor Car Co.* v. *National Labor Relations Board,* 330 U.S. 485, 491; *Wine & Liquor Salesmen, Local 195* v. *National Labor Relations Board,* 452 F. 2d 1312, 1319 (C.A. D.C.). In making this determination, "[t]he Board often must choose among several alternative units, each of which may have rational foundations" (*Local 1325, Retail Clerks International Association* v. *National Labor Relations Board,* 414 F. 2d 1194, 1198–1199 (C.A. D.C.)). But the Act does not require that the unit designated by the Board be the "most" appropriate unit; "the existence of alternative units which are 'appropriate' will not alone warrant reversal if the Board has chosen some other unit which is also appropriate" (*id.* at 1202). With respect to multi-store operations, the Board consistently has determined that bargaining units comprised of the employees at individual stores are appropriate absent a

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bargaining history in a more comprehensive unit or functional integration resulting in centralized control of the stores' labor policies. *E.g., Food Fair Stores, Inc.,* 204 NLRB 75, 76; *Big "N," Department Store No. 307, Big "N", a Division of Neisner Bros., Inc.,* 200 NLRB 935, 936.

The Company's position in the representation proceeding below was that the smallest unit of its employees appropriate for bargaining purposes was a unit comprised of the employees at all of its 24 stores in the Detroit metropolitan area (Pet. App. 29). Although the Board agreed that such a unit might be appropriate (*id.* at 32), it determined that a unit limited to employees at the Company's Universal Mall store was also appropriate and it properly directed an election in such unit. As the Board's Regional Director explained (*id.* at 32–33):

> On the basis of the record, it is clear that individual store managers are clothed with substantial autonomy in supervising and controlling the daily operations of their respective stores and that the centralized activities of the [Company] do not have a substantial relationship to the interests and conditions of employment of the employees at any of the individual stores, who form a cohesive and independent grouping of employees.
>
> The employees perform their day-to-day duties under the immediate supervision of the local store managers who hire them, set their wage rates, may discipline or discharge them, and who personally and effectively are involved

> in the daily determinations of personnel matters, such as setting of work hours, temporary transfers, vacations, and other terms and conditions of employment. There is geographic separation of the stores. Permanent transfers between the stores is of a limited degree and lacks sufficient significance to militate against finding a single store unit to be appropriate. Based on these factors, and the record as a whole, I find that a single store unit is appropriate for the purposes of collective bargaining. * * * [7]

The cases relied upon by the Company (Pet. 11–17) do not support its contention that a unit comprised of the employees at its Universal Mall store is inappropriate. In each of those cases, the courts or the Board found that the control exercised over labor matters by the individual stores or store managers was at most marginal. Thus, in *Gray Drug Stores, Inc.,* 197 NLRB 924, the Board found that the presumptive appropriateness of a single-store unit had

[7] The courts repeatedly have upheld the appropriateness of single-store units where, as here, the store manager exercises autonomy in operating the store. See, *e.g., Continental Insurance Co.* v. *National Labor Relations Board*, 409 F. 2d 727, 729 (C.A. 2), certiorari denied, 396 U.S. 902; *Banco Credito y Ahorro Ponceno* v. *National Labor Relations Board*, 390 F. 2d 110, 112 (C.A. 1), certiorari denied, 393 U.S. 832; *National Labor Relations Board* v. *Lou De Young's Market Basket, Inc.*, 406 F. 2d 17, 23–24 (C.A. 6); *National Labor Relations Board* v. *Lil' General Stores, Inc.*, 422 F. 2d 571, 574 (C.A. 5); *National Labor Relations Board* v. *Western and Southern Life Insurance Co.* 391 F. 2d 119, 122 (C.A. 3), certiorari denied, 393 U.S. 978; *National Labor Relations Board* v. *Groendyke Transport, Inc.*, 417 F. 2d 33, 35 (C.A. 10), certiorari denied, 397 U.S. 935.

been overcome by the geographic proximity of the individual stores, the high degree of employee interchange, and the extensive role of the district manager in the day-to-day operations of the stores. In *Twenty-First Century Restaurant*, 192 NLRB 881, 882, the Board found that a unit limited to the employees at a single restaurant in a chain was inappropriate because "the location manager [was] vested only with minimal discretion with respect to labor relations matters and the method of operation, and the exercise of his discretion [was] carefully monitored by the field supervisor who visit[ed] each location daily and the general manager who also [made] frequent visitations." The Board also relied in *Twenty-First Century Restaurant* on the frequency of employee interchange and the fact that the Company's seven New York locations were within ten miles of each other and within a single administrative district. None of these circumstances is present here.[8]

[8] Similarly, in *National Labor Relations Board* v. *Davis Cafeteria, Inc.*, 396 F. 2d 18, 21 (C.A. 5), the court held that a unit limited to employees at two cafeterias was inappropriate because "labor policy [was] centrally determined, and [the] local managers [did] not have authority to decide questions which would be subjects of collective bargaining * * *." In *Wayne Oakland Bank* v. *National Labor Relations Board*, 462 F. 2d 666, 668–669 (C.A. 6), the court found that employees at a single bank office were not an appropriate unit because of the extensiveness of employee transfers between offices and individual office managers had little control over matters subject to collective bargaining. In *National Labor Relations Board* v. *Solis Theatre Corp.*, 403 F. 2d 381, 383 (C.A. 2), the court found that the theatre manager was not in a "decisionmaking position" and had "little or no authority on labor policy." Finally, in *National Labor Relations Board* v. *Frisch's Big Boy Ill-Mar, Inc.*, 356 F. 2d 895, 897 (C.A. 7), the court concluded that "none of the store managers [would] be deciding questions affecting the employees in the context of collective bargaining."

2. Shortly after the Union had begun its organizational campaign, the Company distributed a memorandum informing its employees that (Add., *infra*, pp. 36–37):

> [D]uring the time that the union is trying to organize the employees, the company will expect employees to render their usual good service to the company and union organizers will not be allowed to discuss the union during working hours on company property. Employees who desire to discuss the union between themselves may do so during non-working hours, making sure that their discussions do not interrupt their normal work.

The Administrative Law Judge found that the Company previously had extended to its sales personnel "considerable latitude * * * to talk to each other while at work" and that "employees not infrequently made collections on selling floors during working hours for such occasions as birthdays, anniversaries, and church raffles" with the Company's knowledge (Add., *infra*, pp. 37–38). He also found that the Company had not shown that a rule limiting discussion of and solicitation for the Union was nevertheless required for business purposes (*id.* at 40). Accordingly, he concluded that, although the rule was not invalid on its face, it was unlawfully motivated; the "rule was actually promulgated and en-

forced 'not * * * to maintain production and discipline, but * * * to interfere with the employees' right of self-organization * * *'" (*ibid.*).

The Board agreed that the Company's no-solicitation rule was invalid because it had been discriminatorily motivated. The Board also concluded that the rule was facially invalid (Pet. App. 5–6; footnotes omitted):

> As written, the rule contains inherent ambiguities. First, it fails to specify whether the term "union organizers" refers to employee organizers or only to nonemployees. A prohibition against union solicitation by employees "during working hours on company property" is clearly unlawful. Accordingly, as the term "union organizers" could be construed to encompass employees who engage in union organizing activity, we find this portion of the rule to be ambiguous and, therefore, invalid.
>
> The last sentence of the rule is also confusing. While rules which prohibit solicitation during "working hours," as this rule apparently does, are generally presumptively invalid, an exception to this policy is made in the case of retail establishments, which, because of the nature of their business, may prohibit solicitation, even during break and lunch periods, on the selling floor. The instant ban on union solicitation, however, is not limited to the selling floor or to other public areas of the store and therefore, in our view, renders the rule invalid on its face.

The Company's challenge to the Board's determination that the no-solicitation rule was discriminatorily

motivated raises only an evidentiary issue, which does not warrant further review. Moreover, the Board correctly found that the rule was invalid on its face.

It is settled that a rule that prohibits union solicitation by employees on company property, but on their own time, constitutes an unlawful impediment to exercise of the rights guaranteed by Section 7 of the Act, 21 U.S.C. 157—absent evidence that the rule is needed to maintain production or discipline. *E.g.*, *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793. Although retail stores have been permitted to enforce no-solicitation rules within selling areas during both working and non-working hours (*e.g.*, *Food Store Employees Union, Local 347, Amalgamated Meat Cutters, etc.* v. *National Labor Relations Board*, 418 F. 2d 1177, 1180 (C.A.D.C.)), the rule at issue here was not so limited. By banning union discussion "during working hours on company property," the rule, by its own terms, applied to non-selling areas—for example, the lounges or the lunchroom. Similarly, by banning union discussion "during working hours," the rule could be understood by the employees as prohibiting such discussion during their entire shift—including break periods and other non-working time in non-selling areas. See *National Labor Relations Board* v. *Southern Electronics Co.*, 430 F. 2d 1391, 1392–1393 (C.A. 6) ("on company property during working hours"); *Campbell Soup Co.* v. *National Labor Relations Board*, 380 F. 2d 372, 373 (C.A. 5) ("during company working hours"); *Saco-Lowell*

Shops, 169 NLRB 1090, 1093 ("during working hours"), enforced, 405 F. 2d 175 (C.A. 4).[9]

[9] None of the cases relied upon by the Company (Pet. 21–22) supports the proposition that a rule couched in language reasonably interpreted to prohibit solicitation during non-working time or in non-work areas is valid. In *United Steelworkers of America* v. *National Labor Relations Board*, 393 F. 2d 661 (C.A. D.C.), and *National Labor Relations Board* v. *WKRG–TV, Inc.*, 470 F. 2d 1302 (C.A. 5), the courts upheld the Board's findings that the rules in question were invalid. *TRW, Inc., TRW Michigan Division* v. *National Labor Relations Board*, 393 F. 2d 771 (C.A. 6), involved only the issue of whether a rule had been discriminatorily motivated. *National Labor Relations Board* v. *Essex Wire Corp.*, 245 F. 2d 589, 593 (C.A. 9), and *Olin Industries, Inc.* v. *National Labor Relations Board*, 191 F. 2d 613, 617 (C.A. 5), held that an employer cannot prohibit employee solicitation during rest time. *Bonwit Teller, Inc.* v. *National Labor Relations Board*, 197 F. 2d 640, 645 (C.A. 2), and *National Labor Relations Board* v. *May Department Stores Co.*, 154 F. 2d 533 (C.A. 8), certiorari denied, 329 U.S. 725, involved application of a no-solicitation rule to selling, rather than non-selling, areas. Finally, *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 182, (C.A. 7), involved the discharge of an employee for soliciting during his working time.

CONCLUSION

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

The petition for a writ of certiorari should be denied.

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ADDENDUM

Alberts, Inc., and Detroit Shoe Company *and* Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO.

DECISION

STATEMENT OF THE CASE

ARNOLD ORDMAN. Administrative Law Judge: Between May 14, 1973, and July 23, 1973, the Charging Party, Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, herein called the Union, file a series of unfair labor practice charges alleging violations of the National Labor Relations Act, as amended, by Alberts, Inc., and Detroit Shoe Company, herein referred to separately as Respondent Alberts and Respondent Detroit Shoe, and referred to together as Respondents. On the basis of these charges, Cases 7–CA–10384, 7–CA–10399, 7–CA–10411, 7–CA–10439, and 7–CA–10489, a consolidated complaint dated July 31, 1973, issued in the designated cases alleging that Respondents had violated Section 8(a)(1), (3), and (5) of the Act in specified respects. Respondents filed an answer to the consolidated complaint dated August 8, 1973.

On August 24, 1973, the Union filed an additional unfair labor practice charge against Respondents,

Case 7–CA–10563, pursuant to which an amended consolidated complaint issued dated September 5, 1973, incorporating new matter. On September 14, 1973, Respondents filed an answer to the amended complaint. As in the answer to the original complaint, the answer to the amended complaint admitted certain allegations, but denied the commission of unfair labor practices and prayed for dismissal of the matter.

A hearing on the controverted issues, with all parties present and represented, was conducted before me in Detroit, Michigan, on September 18–21, 1973. Following the close of this hearing the Union on September 24, 1973, filed an additional unfair labor practice charge, Case 7–CA–10625, averring that Respondent Alberts had laid off employee Joseph Frezza on or about May 12, 1973, and had refused to reinstate him in violation of Section 8(a)(1) and (3) of the Act. Complaint issued on this charge on October 15, 1973. Respondent Alberts filed an answer to this complaint on October 22, 1973, again denying the commission of an unfair labor practice.

In the meantime, on October 15, 1973, the same day the complaint in Case 7–CA–10625 issued, counsel for General Counsel filed a motion to reopen the record in the cases previously described in which the hearing had been closed, to consolidate those cases with the newly issued complaint and to take evidence with respect to the issues set forth in said complaint. On December 6, 1973, the National Labor Relations Board granted this motion and on December 19, 1973, denied Respondents' motion for reconsideration of its ruling.

Accordingly, the record was reopened and further hearing was conducted before me in Detroit, Michigan, on February 7, 1974, again with all parties present and represented. A separate motion to dismiss the allegations of a violation of Section 8(a)(5) of the Act, predicated on an intervening decision of the Supreme Court in *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973), was submitted by Respondents at this reopened hearing. Ruling thereon was reserved and will be disposed of hereunder.

Comprehensive briefs and supplemental briefs have been filed by the Charging Party and by Respondents. General Counsel filed a response to Respondents' motion to dismiss the 8(a)(5) allegations. All submissions have been carefully considered.

Upon the entire record in these consolidated proceedings, I make the following:

Findings and Conclusions

I. Jurisdiction

Respondent Alberts is a Delaware corporation with its general office and warehouse in Ferndale, Michigan, and operates a chain of about 48 retail stores in a three-state area including about 24 stores in the Greater Detroit metropolitan area where it sells women's clothing at retail. During its 1972 operations Respondent Alberts sold goods valued in excess of $500,000 and purchased goods valued in excess of $50,000 from sources outside Michigan, which goods were shipped to its warehouse in Ferndale.

Respondent Detroit Shoe is a Michigan corporation with its principal office and place of business in Detroit, Michigan, and is engaged in the retail sale of women's shoes. Pursuant to lease agreements with Alberts, Respondent Detroit Shoe maintains at least 10 selling locations in the Greater Detroit metropolitan area stores owned by Alberts, including the Universal Mall and Lincoln Park stores. During the calendar year 1972 Respondent Detroit Shoe sold products valued in excess of $500,000 and purchased from sources outside Michigan goods valued in excess of $50,000, which goods were shipped to its Michigan operations.

I find on the foregoing facts of record that Respondent Alberts and Respondent Detroit Shoe are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I find further, and it is undisputed that the Union is a labor organization within the means of Section 2(5) of the Act.

Accordingly, I find that jurisdiction is properly asserted herein.

II. THE UNFAIR LABOR PRACTICES

A. Background and Statement of Issues

Early in 1973 organizational activity began among the employees in stores comprising the Greater Detroit metropolitan area stores operated by Alberts, and so listed in the consolidated complaint. Among these stores are the Lincoln Park store, the North-

land store, and the Universal Mall store, the latter also identified in the record as the Universal City Shopping Center store. Pursuant to a representation petition filed by the Union relating to the Universal Mall store, the Regional Director for Region 7 in April 1973 issued a decision and direction of election to determine whether the employees in the appropriate unit, hereinafter defined, desired to be represented by the Union. The Regional Director, over the objection of Respondents, found that a single store unit was appropriate and defined the appropriate unit as follows:

> All full-time and regular part-time selling and nonselling employees employed by the Employer [Alberts] at its Universal City Shopping Center store, including employees of Detroit Shoe Company; but excluding professional employees, guards and supervisors as defined in the Act.[1]

Respondents request for review of the decision and direction of election was denied by the Board on May 1, 1973, on the ground that it raised no substantial issues warranting review. I find that the unit as described herein is appropriate.

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[1] The Decision and Direction of Election is captioned "Alberts, Inc., Detroit Shoe Company," and contains the following footnote:

"The name of the Employer is set forth as it was amended at the hearing. Detroit Shoe Company is a lessee at various Alberts, Inc. stores. Although it was not served with the Notice of Hearing, the attorney for Alberts, Inc. entered an appearance for Detroit Shoe Company and represented it in the proceedings. The parties agreed that any election directed should include employees of Detroit Shoe Company."

The election was conducted on April 10, 1973, and the Union prevailed by a vote of 17 to 5. Respondents filed objections to the election including, *inter alia*, a claim that the election was tainted because of the Union's alleged waiver of the payment of initiation fees by unit employees. The Regional Director in a supplemental decision, issued early in July 1973, on the basis of an investigation, found the objections in their entirety to be without merit and certified the Union as the exclusive representative of the employees in the unit already set forth. A request for review of this decision and certification was likewise denied by the Board on July 30, 1973, on the ground that no substantial issues warranting review were raised.

As already indicated, the complaints in the instant proceeding allege, in sum, that Respondents engaged in violations of Section 8(a)(1), (3), and (5) of the Act. More specifically, the complaint alleges that Respondents violated Section 8(a)(1) of the Act by certain pre- and postelection conduct, consisting of the promulgation of a no-solicitation rule, interrogation, threats, promises of benefit, solicitation and promised resolution of grievances, surveillance, and the grant of wage increases; violated Section 8(a)(3) and (1) of the Act by changing various working conditions by enforcing an invalid no-solicitation rule, and by discharging and refusing to reinstate employees Rose Jackson, Deborah Rowan, and Joseph Frezza; and violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union with respect to the

Universal Mall employees; by refusing to furnish the Union with relevant data concerning working conditions; and by the unilateral changes of existing working conditions.

Respondents deny generally and specifically the commission of the alleged unfair labor practices. Respondents deny also that they were joint employers as alleged in the complaint. Counsel representing both Respondents throughout the instant proceedings was the same counsel. With specific reference to the allegations of refusal to bargain, Respondents adhere to defenses considered and rejected in the representation proceeding heretofore described: (1) that the single-store unit at the Universal Mall store in which the election was directed was not appropriate for bargaining; and (2) that the objections predicted on the preelection conduct of the Union were erroneously dismissed. Accordingly, Respondents urge that there was no obligation to bargain and that the refusal to bargain was lawful.

The specific allegations of unfair labor practices and the defenses thereto are considered hereunder *seriatim*. Preliminarily, however, the question of the joint employer status of Respondents will be considered.

B. The Joint Employer Status of Respondents

It is admitted that Respondent Detroit Shoe maintains selling locations for the sale of women's shoes in at least 10 of Respondent Alberts' stores in the

Greater Detroit metropolitan area. These retail selling locations, which include, *inter alia,* the Universal Mall and Lincoln Park stores of Alberts, are operated pursuant to lease arrangements with Alberts as lessor and are part of the latter's retail store operations. The evidence is undisputed that, with respect to the locations here involved, Respondents hold themselves out to be one integrated operation and there is no indication to the general public that the retail shoe department is not part of Alberts' total operation. The same cash registers are used, Detroit Shoe merchandise is packed in Alberts wrappers, and the sales slips are Alberts sales slips. All sales income from Detroit Shoe is turned over to Alberts, which deducts from that sum all expenditures made in Detroit Shoe's behalf including the wages paid the Detroit Shoe employees.

So far as labor relations are concerned, Detroit Shoe employees are subject to the rules and regulations of conduct and the general working conditions established by Alberts. Indeed, William B. Klinsky, president of Alberts, acknowledged that he possessed a substantial degree of control over the hiring and firing of Detroit Shoe employees. Significant also in this regard is the circumstance, already noted, that in the representation proceeding, previously described, both enterprises, represented by the same counsel, agreed that any election there directed should include in any appropriate unit found the employees of both Alberts and Detroit Shoe.

In the instant proceeding General Counsel alleged that Alberts and Detroit Shoe were joint employers

with respect to the employees here involved. Respondents, represented in this proceeding also by identical counsel, took the position both before and during the hearing that they were not joint employers. In the briefs filed by Respondents following the close of the hearing, however, only casual reference is made to this issue.

In all these circumstances I conclude and find that Respondent Alberts and Respondent Detroit Shoe are joint employers of the employees under consideration here. The uncontradicted evidence here adduced regarding the complete integration of the two enterprises in the subject stores and the substantial control exercised by Alberts over the labor relations and terms and conditions of employment of the Detroit Shoe employees amply warrants this finding even without reference to the prior representation proceeding and the determinations made therein. See *Checker Cab Company and its Members,* 141 NLRB 583 (1963); *Frostco Super Save Stores, Inc.,* 138 NLRB 125 (1962); *Thriftown, Inc., d/b/a Value Village, et al.,* 161 NLRB 603 (1966).

C. The Allegations of 8(a)(1) Violations

1. Surveillance

On the evening of May 4, 1973, the Union held a meeting for Respondents' employees at the Froling Bowling Lanes located near Respondents' Universal Mall store. During the course of that day Lena Barone and Gloria Blank, who serve as dress buyers

and merchandisers for all of Respondent Alberts' stores, learned that a union meeting was scheduled for that evening. Accordingly, after the Universal Mall store, where Barone and Blank had been working that day, closed, the two of them drove over and parked in front of the bowling alley, admittedly, according to Blank's testimony, to "look and see" what was happening at the union meeting. Sometime after they parked, and while employees were gathering at the meeting, they were spotted by union organizers who approached them and took a photograph. Barone and Blank took off hurriedly. Blank called President Klinsky and reported what she had done. Klinsky criticized Blank for her actions. However, Respondents never informed the employees that the actions of Barone and Blank were unauthorized.

On undisputed facts, therefore, it is apparent that Barone and Blank did engage in surveillance of union activity and that the employees were aware of that surveillance. Respondents defend, however, on the ground that Barone and Blank had no supervisory authority, that their actions were not pursuant to Respondents' direction or orders, that Respondents did not approve of such actions, and that Respondents were not answerable therefor. The short answer to the foregoing is, as William Klinsky, president of Alberts, volunteered, that Barone and Blank were part of management, and received the same range of pay as managers for Alberts. The record is clear that the employees also considered Barone and Blank as part

of management. Nor were the employees ever told that the actions of Barone and Blank were unauthorized. In these circumstances the surveillance in which Barone and Blank engaged plainly constituted interference, restraint, and coercion of employees in the exercise of their organizational rights, a violation of Section 8(a)(1) of the Act. *Intertype Company, a Division of Harris-Intertype Corporation* v. *N.L.R.B.*, 371 F.2d 787 (C.A. 4, 1967); *N.L.R.B.* v. *A. R. Gieringer Tool Corp,* 314 F.2d 359, 362–363 (C.A. 7, 1963).

I so find.

On the other hand, I find inadequate evidence to support the allegation that Patrick Casey, a supervisor for Detroit Shoe, engaged in unlawful surveillance of a union meeting held at the Four Vees Lounge in Dearborn, Michigan, on the evening of April 12, 1973. It is established that a union meeting was held on that occasion and that Patrick Casey, his wife, and Marlene Germeuth, a secretary and handbag buyer for Detroit Shoe, were present at the lounge during the meeting. It is also established that Patrick Casey advised his superiors of the meeting. On the other hand, Patrick Casey credibly testified that he was a very frequent visitor at the lounge, and that he came to the lounge on the evening of April 12 to celebrate the birthdays of his wife and secretary. That testimony was unshaken on cross-examination. There is no independent evidence to establish any reason for the presence of Casey and his companions that evening other than the one which Casey gave.

Absent such evidence neither a finding of unlawful surveillance or of creating an impression of such surveillance is warranted. *Atlanta Gas Light Company,* 162 NLRB 436, 438 (1966).

Accordingly, I conclude and find that General Counsel has not sustained the allegation of the complaint that Patrick Casey engaged in unlawful surveillance.

2. The grant of wage increases

The relevant allegation here, denied by Respondents, is that Respondents between March 1 and May 10, 1973, granted certain of its employees in the Universal Mall store wage increases timed to dissuade employees from supporting the Union and to vote against the Union. The Board-conducted election among the Universal Mall store employees was held on May 10, 1973.

Tonda Thayer, a Universal Mall store employee, testified that she received a 10-cent-per-hour raise in March 1973. She had never received a raise during her prior employment and had not requested the March 1973 increase. According to Thayer, Tlumak, manager of the store, who gave her the raise, commented at the time that the raise "didn't have anything to do with, you know, what was going on."

Juliette Dickason, a 4-year employee at Universal Mall, testified that she had gotten two raises in previous years which she had requested but that in the first or second week of March 1973 she had gotten two

successive weekly hourly raises of 5 cents each which she had not requested.

Helen Pochinco, a Universal Mall salesgirl since 1965, testified that she received a 5-cent hourly raise in April or May of 1973. Pochinco had received raises in earlier years. Unlike Thayer and Dickason, Pochinco had made a request for the 1973 raise.

Margaret Prano, a cashier at Universal Mall, who was a union observer at the May 10 election, testified that she had asked for and received a wage increase in March 1973. Her hourly increase amounted to 10 cents an hour.

Sharon Lee Duncan worked at the Universal Mall store for only a brief period; from February to June 1973. She recalled that she had asked for and received a small increase in May but only after some discussion among management representatives as to her sympathies in the ongoing organizational campaign.

Respondents contributed to the evidentiary material here relevant by introducing into evidence two weekly payroll timesheets from its Universal Mall business records, one sheet for the week ending February 24, 1973, and the other, for the week ending March 3, 1973. The timesheet for the week ending February 24, 1973, reveals 5-cent increases for Dickason and Pochinco but no increases for anyone else on the roster. The timesheet for the following week ending March 3, 1973, reveals another 5-cent increase for Dickason, a similar raise for Thayer, and 10-cent raises for three of the remaining 18 or so employees on the roster.

I credit the testimony of Tonda Thayer except that I find the raise actually given her as shown by the timesheet was for 5 cents, not 10. I credit the testimony of Dickason except that I find on the basis of the timesheets that her successive 5-cent increases were for the weeks ending February 24 and March 3, respectively. I credit the testimony of Pochinco except that I find that the last 5-cent increase to which she testified, the only one she received in 1973, was granted in the latter part of February 1973 as the February 24 timesheet shows rather than in April or May of 1973 as she recalled. Finally, I credit the testimony of Prano and Sharon Lee Duncan as to the amount and timing of their increases. Significantly, Respondents did not put into evidence timesheets to challenge the testimony of Prano and Duncan; the only timesheets put into evidence were the two already described.

The burden of proof that the foregoing raises had the illicit objective or effect of alienating the employees from the Union rests, of course, upon General Counsel. In this respect certain matters are clear. First, the raises were granted during the critical preelection period when the organizational campaign among the Universal store employes was at its height and Respondents were bending their every effort to defeat unionization. The recipients of the raises here under consideration were the targets of Respondents' attentions not only with respect to the raises but also with respect to other techniques employed by Re-

spondents and described in more detail in this Decision.

As the Supreme Court said a decade ago, "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." *N.L.R.B.* v. *Exchange Parts Co.,* 375 U.S. 405, 409 (1964). In this context and against the background of a hotly contested preelection campaign, the otherwise cryptic remark of store manager Tlumak to Tonda Thayer that the raise given the latter did not "have anything to do with, you know, what was going on" takes on added significance. And more directly in point is the discussion among management representatives in connection with the raise given Duncan as to where her sympathies lay in the ongoing union campaign.

The inference of the illicit purpose motivating the raises is strengthened by the frailty of Respondents' defenses in this regard. See *N.L.R.B.* v. *Bird Machine Company,* 161 F. 2d 589, 592 (C.A. 1, 1947), and cases there cited. Thus, Respondents contend that "the initial wage increases were processed and given before they were aware of the Union organizing campaign" and that "the additional wage increases which may have been processed after knowledge of the Union campaign were granted the following week in order to raise all employees to the level established by the initial increases." The reference to "the initial

wage increases" is apparently to the raises given to Dickason and Pochinco, the only two raises appearing on the timesheet for the week ending February 24, 1973. Respondents' protestation that this occurred before knowledge of the union campaign is somewhat suspect inasmuch as President Klinsky candidly acknowledged that the union activity came to his attention "in the later part of February." Even assuming that the two raises given to Dickason and Pochinco for the week ending February 24, 1973, antedated Respondents' knowledge, certainly the later raises, including an additional raise given Dickason, postdated that knowledge. The handful of raises given for the week ending March 3, 1973, hardly demonstrates an effort "to raise all employees to the level established by the original increases." For the greater number of employees listed on the payroll sheet for that week were not given raises at all, and the failure of Respondents to produce any later payroll sheets cogently suggests that such sheets would not support the position they presently urge.

Respondents argue, correctly, that it is not an unfair labor practice to implement wage increases during an organizational campaign where the wage increase policy or program had been decided upon prior to the organizational campaign. But this defense, too, does not withstand scrutiny. No probative evidence sufficient to establish such a predetermined policy or program was submitted.

Accordingly, I conclude and find that Respondents violated Section 8(a)(1) of the Act by granting wage

increases to dissuade employees from supporting the Union and to influence their votes in the forthcoming election.

3. Coercive interrogation, threats, and other unlawful interference

Deborah Anne Rowan, an employee at the Lincoln Park store, was active in the union campaign and attended the April 12 meeting at the Four Vees Lounge at which Patrick Casey was present. Her union activities were known to Respondents. On the day after the Four Vees meeting, Rosario Criscuolo, manager of the Detroit Shoe department at the Lincoln Park store, told Rowan he knew about the meeting and advised her not to get mixed up with the Union. About a month or more later, Martin Felder, recently appointed personnel director for Alberts, came to the Lincoln Park store. Rowan was summoned to meet with Felder in the store lounge. Felder told Rowan that Alberts was a growing business and that the employees had been neglected but that was now changed. Felder explained the benefits the employees were receiving. According to Rowan, Felder then asked her if she had any problems, asked her to submit her problems to him, and stated that he was so advising all the other employees in the store.[2]

[2] Felder confirmed that he met with Rowan in the store lounge and discussed company benefits with her. He testified that the meeting took place in May. In either event, the discussion took place against the background of an active organizational campaign which embraced the Lincoln Park store also.

Hyman Tlumak became manager of the Universal Mall store in July 1972. Immediately after the May 10, 1973, election, Tlumak held two meetings with the employees relating to working conditions, a matter discussed in more detail hereunder. At the first meeting, according to Tonda Thayer, Tlumak announced that the Union was not in yet and he was still manager. Helen Pochinco testified that at this same meeting Tlumak stated that if the Union got in things would be "pretty rough," that the employees had "asked for it," and that is "what you're going to get." Tlumak went on to discuss the new working conditions. I credit the testimony of Thayer and Pochinco and find that Tlumak did make the remarks attributed to him.[3]

Margaret Prano, who worked at Universal Mall, testified that on or about May 5, shortly before the election, Lena Barone, already identified as part of management, took her to lunch, asked her if she was mixed up in the Union "mess," and, when Prano indicated she was for the Union, sought to persuade Prano to take her problems to management instead. Lena Barone was not called as a witness. Prano's testimony is uncontradicted and I credit that testimony.

Joseph Lee Frezza was hired as a part-time stockboy at the Universal Mall store in March 1973 and worked there until very shortly after the election,

[3] Tlumak did not testify at the initial hearing. He was called as a witness at the reopened hearing relating to the discharge of Frezza and confined his testimony almost exclusively to that subject matter.

when he was discharged.[4] Frezza credibly testified that on May 2, 1973, Manager Tlumak called him aside for a talk and told him that he, Frezza, and the other stockboy, Jim Bromm, would soon be made assistant managers, but that if the Union got in, that would not be possible.[5]

Within a few days after this May 2 conversation between Frezza and Tlumak the latter informed Frezza that President Klinsky wanted to see Frezza at Alberts' main office in Ferndale. Tlumak drove Frezza to that office. On the way Tlumak asked Frezza about a union meeting held the night before and also asked who was in attendance. Frezza did not reply. When Tlumak and Frezza arrived at Klinsky's office, Klinsky opened the conversation by asking if Frezza had any questions about the Union. Frezza had none. According to Frezza, Klinsky then stated that Alberts would not be able to employ any more part-time help, would not be able to pay them union wages, and would rather hire older, more experienced men for that work. The meeting took about half an hour. Klinsky did state in the course of the discussion that no action would be taken against anyone who voted for the Union, that no one would be fired if the Union was

[4] Frezza testified as a witness for General Counsel at the opening stages of the hearing. The legality of his discharge was not put in issue until after the initial hearing terminated. It was the later allegation that Frezza was discriminatorily discharged which led to the reopening of the hearing.

[5] Throughout this initial hearing Bromm was erroneously designated as Brown.

voted in, and that it was the choice of the employees as to whether they wanted the Union.

William Klinsky's version of the conversation differed in only minor respects. According to Klinsky, the meeting resulted from a telephone call he received from Tlumak who said that Frezza wanted to see Klinsky. Klinsky confirmed that the meeting took place on a Saturday morning early in May. He confirmed also asking Frezza if the latter had any question about the Union. According to Klinsky, Frezza replied that he knew the Union side of the story and wanted to hear the Company's side. Klinsky testified that he replied that Respondents really didn't need a union; that a union would not be in Frezza's best interests, or in the best interests of student learners, part-time people, and young adults; and that union wage rates discouraged employers from hiring young people; but that Frezza could do what he wanted.

The respective versions given by Frezza and Klinsky are in large part consistent. However, I deem it quite unlikely and do not believe that Frezza, a new and young part-time stockboy, would have requested a meeting with the president of Alberts, as Tlumak purportedly reported to Klinsky. Rather, it would appear, and I find, that the conference with Frezza was utilized by Respondents as one more technique in combatting unionization. Notwithstanding somewhat guarded language, I believe the net of Klinsky's remarks appraised either on Frezza's version or Klinsky's own version, was that unionization would have an adverse impact on the employees, particularly young and part-time employees. Such a message simply emphasized Tlumak's earlier declaration that Frezza's promotion to assistant manager would be endangered by unionization.

A month after the election, the antiunion campaign still had not abated. On or about June 12, according to the credited testimony of Juliette Dickason, Tlumak talked to a group of the Universal Mall employees on the store floor. He advised them that four girls who were Union adherents had quit and asked who would be next. Tlumak added that the Union the employees had picked was no good, would not get them anything, and was a sorry union. He stated also that if there had to be another election (objections had been filed to the May 10 election), the employees would lose out because the girls were forced into it and part-time empoyees had nothing to gain from unionization.

Based upon the foregoing evidence, I am satisfied and find that Respondents through their officers and agents engaged in coercive interrogation, threats, and promises of benefit directed to their employees, that they further created the impression that the employees' organizational activities were being subjected to surveillance, and that they solicited the submission of grievances to management rather than to the union, all to the end of discouraging unionization. I find

further that this conduct was violative of Section 8(a)(1) of the Act.[6]

4. The promulgation and enforcement of a no-solicitation rule

As soon as Respondents learned of the organizational campaign, on their own admission in late February 1973, Respondents promulgated and enforced a no-solicitation rule.

This rule was embodied in a two-page written memorandum, prepared after consultation with counsel, which was published and distributed to the employees. The memorandum generally advised employees of their rights and stated Respondents' intention to comply with the law, but informed the employees that in Respondents' view they would be better off without a union.

With particular reference to the issue here under consideration, the memorandum stated:

> During the time that the union is trying to organize the employees, the company will expect employees to render their usual good service to the company and union organizers will not be allowed to discuss the union during working hours on company property. Employees who desire to discuss the union between themselves may do so during non-working hours, making sure that their discussions do not interrupt their normal work.

[6] Respondents argue, *inter alia*, that at least their preelection conduct could not in any event be found to constitute unlawful interference because they obviously failed to prevent a union victory in the Board-conducted election. So far as I am aware, the touchstone of unlawful conduct in this regard has never been the degree to which that conduct succeeded or failed.

Klinsky, president of Alberts, Inc., acknowledged that no rule of this kind had ever been put in writing before the instant organizational campaign but testified further that the published rule was merely a restatement of a previously unwritten policy of management prohibiting solicitation or other work-interrupting activity on the selling floor. According to Klinsky, publication and distribution of the no-solicitation rule was prompted by his concern that disruption of operations and "disservice to customers" might arise from union organizing activity.

Notwithstanding the asserted preexisting policy, credited testimony establishes that considerable latitude had always been extended to sales personnel to talk to each other while at work and that employees were not reprimanded for such conduct. By way of contrast, after publication of the rule, Rose Jackson, an active and known union adherent, subsequently discharged, was reprimanded for talking about union matters on the selling floor.

Also, the record affords considerable evidence, which I credit, that employees not infrequently made collections on selling floors during working hours for such occasions as birthdays, anniversaries, and church raffles, and that among the people solicited on such occasions were Marvin Finkel, manager of the Northland store, and Mrs. Cramer, assistant manager at Northland.[7] In fact, President Klinsky acknowledged

[7] Despite extensive testimony by Finkel this evidence is uncontradicted. Mrs. Cramer did not testify at all.

that the asserted policy antedating the published rule, was one of "reasonableness."

Nonetheless, against this factual background, Respondents argue, quite correctly, that the published rule is on its face presumptively valid. Respondents argue further, and cite authorities which establish, that the mere fact that such a rule is promulgated at the start of a union campaign or that other than union solicitations took place on occasion during the pendency of the rule does not, of itself, destroy the presumption of validity.[8]

Not gainsaying these settled principles, it is equally well settled that the presumptive validity of an otherwise proper no-solicitation rule can be and is destroyed where affirmative evidence demonstrated that it was adopted and/or promulgated for a discriminatory purpose. See *Star-Brite Industries, Inc., supra* at fn. 8; *State Chemical Company,* 166 NLRB 455 (1967). Thus, in *State Chemical* the Board found that an otherwise valid no-solicitation rule was discriminatorily promulgated and enforced in violation of Secton 8(a)(1) of the Act. In so finding the Board relied on three factors: (1) that the rule was promulgated at a time of intensive union activity and was specifically directed in the first instance at a known union adher-

[8] See, *e.g.*, *Star-Brite Industries, Inc.*, 127 NLRB 1008 (1960); *The Permian Corporation*, 189 NLRB 860 (1971); *Atkins Pickle Company, Inc.*, 181 NLRB 935 (1970); *Veeder Root Company, Altoona Division*, 192 NLRB 973 (1971). *Sequoyah Spinning Mills, Inc., a Wholly Owned Subsidiary of Sequoyah Industries, Inc.*, 194 NLRB 1175 (1972).

ent; (2) that the employer permitted solicitations of other kinds during worktime; and (3) that the employer was hostile to union organizational efforts as reflected by other conduct found violative of the Act. In such circumstances, the Board held, it was incumbent upon the employer to establish that the rule, though limited to union talk and solicitation, was nevertheless required in order to maintain production or discipline. In *State Chemical,* the Board found that the employer had not done so.

In appraising the relevant authorities and with due regard for the precedents cited, I conclude and find that the facts in the instant case fall in the category of conduct controlled by *State Chemical.* As in *State Chemical,* the no-solicitation rule here was promulgated at a time of intense union activity and was specifically directed in the first instance at employee Rose Jackson, a union adherent who was subsequently discharged. The record evidence clearly establishes that prior to the promulgation of the written rule here under consideration, discussions among sales personnel were openly tolerated on the selling floor during working hours and that collections for special purposes were likewise allowed under the circumstances. Management officials were not only aware of these activities but even participated in them. On President Klinsky's own admission, the preexisting policy, to the extent such a policy existed, was one of "reasonableness," and the record is devoid of evidence of any past reprimands for infractions of such policy. Finally, the record

affords ample evidence, much of which has already been summarized herein and more to be detailed hereunder, of adamant hostility to unionization. Yet Respondents, apart from asserting an unsubstantiated apprehension that union solicitation might result in disruption of operations or "disservice to customers," made no showing that the published rule was necessary to maintain production or discipline; prior experience under the asserted preexisting policy points to a contrary conclusion.

Accordingly, I conclude and find that, notwithstanding the presumptive validity of the published no-solicitation rule, that rule was actually promulgated and enforced "not by a purpose to maintain production and discipline, but by a purpose to interfere with the employees' right of self-organization and thus violated Section 8(a)(1) of the Act." *State Chemical Corp., supra* at 456, and cases there cited.

D. The Unilateral Changes in Working Conditions

Immediately after the union victory in the May 10 election at Universal Mall, Tlumak, manager of the store, held two meetings with the employees to announce changes in working conditions. More stringent conditions were imposed. No longer were employees permitted to have coffee or smoke behind the wrapping desk whenever they were not busy. Instead, they were given two short breaks for that purpose, one in the morning and one in the afternoon. Telephone privileges—occasional personal calls had previously been

permitted—were abolished. Chairs on which employees had formerly been permitted to sit when they were not busy were removed. The former practice of permitting employees to trade days off or switch schedules was eliminated. Personal favors would no longer be granted. In addition, a new dress code was imposed. Salesgirls' attire, before, merely had to comply with a standard of reasonableness. The new code allowed only dresses or pantsuits.

It was at these meetings that Tlumak, as already noted, told the employees, in relation to the union election, that things would be "pretty rough," that the employees had "asked for it," and were "going to get" it.

Respondents, however, seek to explain these changes in terms and conditions of employment on the basis that President Klinsky, who was in the store on the day of the election, had instructed Tlumak to remedy what he considered to be a haphazard and substandard store operation adversely affecting sales. Respondents argue also that except for the change as to coffee and cigarette breaks, the other admittedly announced changes were not actually enforced.

The fact of the matter is, however, that even by Respondents' version changes were made. More importantly, Tlumak, whatever his instructions from Klinsky, made it indelibly clear to the employees why the changes were being made.

In these circumstances it is clear and I find that Respondents by announcing and making the changes in working conditions here found and in the manner

and for the purpose here found violated Section 8(a)(1) and (3) of the Act. *Robert G. Purcell, et al., d/b/a Finnical Tire Company,* 171 NLRB 242, 245 (1968); *A. S. Beck Shoe Company,* 92 NLRB 1457, 1458 (1951); *Buddies Supermarkets, Inc.,* 192 NLRB 1004, 1012 (1971).

I find further that this same conduct violated Section 8(a)(5) of the Act as alleged. It is undisputed that Respondents made these changes unilaterally and without consultation or bargaining with the Union, which had just been designated by the employees in a Board-conducted election as their bargaining representative. It is immaterial in this connection that the Union had not yet been formally certified. Respondents were aware, when they took their unilateral action, of the Union's majority status. They were thereby precluded from taking action respecting terms and conditions of employment in disregard of their lawful bargaining obligation. *Fleming Manufacturing Company, Inc.,* 119 NLRB 452, 464 (1957). And see especially *Mike O'Connor Chevrolet-Buick-GMC Co., Inc.,* 209 NLRB 701 (1974).

E. The Discharges

1. Rose Jackson

Rose Jackson was an employee at the Northland store. Her employment began on September 11, 1972, and continued through May 23, 1973. From September 1972 through February 1973, her work record was excellent. Marvin Finkel, manager of the Northland

store, conceded that she was a "good" or "okay" employee throughout these months. Consistent with that appraisal was Rose Jackson's testimony, which I credit, that Finkel told her at the end of that period that she was the top salesgirl in the store despite the fact that she had other duties also, and that Finkel wanted her from then on to devote herself exclusively to sales.

Beginning in March 1973, however, management suddenly began to find fault with Rose Jackson's work performance. By the time management also knew, as shown by the testimony of Irving Mendelson, Alberts' area supervisor, and by the testimony of Marvin Finkel, that Rose Jackson was active in the Union. Indeed, she was an immediate target when the no-solicitation rule was promulgated.

Rose Jackson's discharge took place on the morning of May 23, when Irving Finkel handed her a termination slip which he had prepared. The slip contained a notation that Jackson had been the recipient of several prior warnings, the first of which was dated 3–12–73. Under the heading "Reason for Termination" the following entry appeared:

> Rose Jackson scheduled to work Sat. 5–19–73. She had said she would be a little late but would be in 1 p.m. the latest—she called at 1 p.m. to tell me a big luncheon was planned until 4 or 5 p.m. which she didn't know about. She said it wouldn't pay for her to come in since she was scheduled until 6 p.m. The regular girls work every other Sunday. It was Rose Jackson's turn Sun. 5–20–73. Said she was sorry but couldn't work Sunday either.

The evidence as to the incident which was assigned as the "Reason for Termination" was not in substantial conflict. Summarizing it in brief, Rose Jackson testified that she had about 2 weeks before the event notified Finkel that a Bar Mitzvah was scheduled for her nephew on the weekend of May 19 and 20 and that she wanted that Saturday and Sunday off. Finkel agreed and asked Jackson to remind him later so he could set up the work schedule accordingly. Jackson did remind him several days later and Finkel asked Jackson to come in on Saturday as soon as she could after the religious services were over. When Jackson left at the end of her work on Friday, May 18, the new work schedule had not yet been posted. The religious services on Saturday concluded at 1 p.m. and Jackson learned that morning that a family luncheon was scheduled thereafter. Accordingly, Jackson called Finkel and told him that she would not be in. Finkel remonstrated and told her he had planned on her coming in Finkel also informed Jackson in this conversation that he had scheduled her for work that Sunday. When Jackson reminded Finkel that she had told him a few weeks earlier she could not work that Sunday. Finkel replied that he could not rearrange the work schedule.

Jackson did not report to work that Saturday or Sunday. She did report to work Monday morning and nothing was said to her about her absence the previous 2 days. Tuesday was Jackson's day off. The following morning, May 23, Finkel summarily discharged Jackson right after she reported for work for her 2-day

absence and, when Jackson protested, added the phrase and for "other violations, too."

Finkel's version of these events, as indicated, was largely consistent. Finkel agreed that he had given Jackson permission to have Saturday morning off and stated that he had told her to come in at 1 p.m. Finkel confirmed also that Jackson called him on Saturday to state that she could not come in because of a scheduled luncheon that afternoon. Finkel testified that he objected to this and that he also told Jackson she was scheduled to work the following day, Sunday. Jackson explained that she could not come in Sunday. According to Finkel, he was upset by this situation and informed his area supervisor, Irving Mendelson, that he wanted to fire Jackson. Over the next few days there was some additional discussion with Martin Felder, personnel director for Alberts; permission was granted for Finkel to fire Jackson and the discharge took place on Wednesday morning, as already described.

Respondents were obviously concerned at the hearing as was Finkel at the time of the discharge itself that the assigned reason for termination, namely, the "Bar Mitzvah" absence, was a less than plausible explanation for the discharge of a top salesgirl. Accordingly, they sought to buttress their position by marshalling what they, not ineptly, describe as a "litany" of offenses to justify the discharge of Jackson. Thus, Respondents point out that Jackson was reprimanded on March 12, 1973, for trying on clothes in an unauthorized area; on March 26, 1973, for

punching the timeclock improperly; on March 25, 1973, for again trying on clothes in an unauthorized area; on March 31, 1973, for engaging in union solicitation on the selling floor; on April 6, 1973, for leaving the store through the wrong exit; on May 12, 1973, for again punching her timecard improperly; and, also, on May 12, 1973, for disobeying the order of a supervisor.

Extended discussion of this "litany" of offenses would be superfluous. Suffice it that considerable evidence was adduced to show that these offenses, to the extent they occurred at all, were inconsequential and not atypical in that other employees also engaged in them. The fact is that these asserted derelictions, advanced to buttress the asserted ground for discharge, had never been considered, either individually or collectively, as warranting anything more than a reprimand, often merely an oral reprimand. Moreover, what cannot be overlooked is that all of the asserted derelictions allegedly occurred and were noted only after the onset of organizational activities in which Jackson admittedly participated. Indeed, Irving Mendelson, as area supervisor of the Northland store among others, testified that he learned of Jackson's offenses only after he had knowledge of her union activities and had heard no complaints about Jackson before then. Apparently, whatever offenses Jackson may have committed became serious only after her union activities became known.

To be sure, it is not Respondent's burden to establish the legality of Jackson's discharge. Any reason or

no reason at all is sufficient. The burden of illegality is for General Counsel to establish and the critical question is not whether the asserted grounds for discharge were sufficient to justify the discharge but rather whether they were the true reason for the discharge. Conversely, the question is whether the discharge was really motivated by Respondent's antipathy to the organizational campaign and Jackson's role therein.

Based on the foregoing analysis and on all the evidence of record, I conclude that the variety of grounds asserted for Jackson's discharge were really pretexts, contrived to mask the real reason for the discharge. The insubstantial nature of those grounds and the fact that Jackson's work performance, unimpeachable before union activities began, suddenly became subject to frequent lapses thereafter, cogently support the inference that the real reason for the discharge lay in her union activities. The discharge occurred on May 23. At that point the organizational campaign was making headway. On May 10 the Union had won an election in the neighboring Universal Mall store. Action had to be taken to stem the organization effect.

Accordingly, I conclude and find that the discharge of Rose Jackson was to discourage Union activity and was violative of Section 8(a)(3) and (1) of the Act.

2. Deborah Rowan

Deborah Ann Rowan worked at the Alberts Lincoln Park store from the summer of 1971 until her dis-

charge on May 29, 1973. Rowan started as a salesgirl for a brief period, then worked as a checker in the fitting room, and during the last year of her employment worked in the stockroom as a part-time employee. Until April of 1973, Mannino was manager of the Lincoln Park store and Sophie Fields was assistant manager. Thereafter Mannino left and Fields took over as manager.

It is undisputed that Rowan was quite active in behalf of the Union during the organizational campaign and that management was aware of her activity in that regard. Rowan was among the employees present at the April meeting in the Four Vees lounge and was seen there by Patrick Casey. As already noted also, Rosario Criscuolo, manager of the Detroit Shoe department at the Lincoln Park store, advised Rowan that he knew of her union activity and told her not to get mixed up in it. Fields also admitted that she was aware of Rowan's union activity when she discharged Rowan.

The circumstances attending Rowan's discharge are also not in dispute. Rowan testified that she had decided to take off on the Memorial Day weekend. Accordingly she did not report to work on Saturday, May 26. Sunday was not a scheduled workday for Rowan. Rowan, according to her testimony, went up north for the weekend, called her mother from there, and told her mother to report to the store that she was sick. Rowan admitted that this was a lie; she was not ill. Rowan further testified that she returned home

Sunday night but was unable to reach Fields. The store was closed on Monday because of the holiday. Rowan did reach Fields by telephone on Tuesday. According to Rowan, Fields told her in that conversation that she was being let go because Fields wanted a full-time employee instead of a part-time employee. Rowan suggested that she could work full-time because she got home from school by 12:30 p.m. and could then go directly to work, to which Fields responded that Rowan was going to be let go anyway. After wishing her a speedy recovery from her illness Fields terminated the conversation. Except for an occasional shopping trip, Rowan has not returned to the Lincoln Park store.

Fields confirmed that she had terminated Rowan's employment in a telephone conversation on Tuesday morning, May 29. Fields explained that the other stockgirl in the store, also a part-time employee, Sandy Bordeau, had quit a week earlier and that a part-time stockboy who did the same kind of work had quit about the same time. Fields testified further that Rowan did not do her work properly and that she, Fields, had frequent occasion to speak to Rowan on that subject dating back to the time she, Fields, was assistant manager. Rowan also had a record of absenteeism, much of it due to illness. Fields confirmed that she had received a call from Rowan's mother on the Memorial Day weekend reporting that Rowan was ill and that Rowan herself called in on Tuesday morning. According to Fields, she told Rowan that she had already planned on terminating Rowan's employment, that the other

part-time girl had quit, and that she had decided to replace both part-time girls with a full-time employee. Fields testified that Rowan replied, "all right." Thereafter, Fields did hire a full-time employee who was still working at the Lincoln Park store as of the time of the hearing.

Respondents do not seize upon Rowan's unjustified absence on the Memorial Day weekend and her admitted falsification in that regard to justify Rowan's discharge. Instead, Fields candidly admitted that the decision to terminate Rowan antedated that incident. The reasons given for the discharge were twofold: (1) that Rowan was not performing her job properly; and (2) that it was decided to hire a full-time employee to replace Rowan and the other part-time employee who had quit.

So far as Rowan's work performance was concerned it does not appear that she had received any written reprimands. However, on cross-examination, Rowan acknowledged that her work had been frequently the subject of criticism not only from Fields but also from the new assistant manager of the store. Her record of absenteeism was also a major factor notwithstanding that, in many instances, the absences were genuinely due to illness. The decision to hire a full-time girl to replace Rowan and the other part-time stock employee is certainly explicable in view of the situation that arose when one of two quit and the other had a record of absenteeism and poor work performance.

Certainly here, as in the case of Rose Jackson, Respondents' antipathy to unionization and the knowledge that Rowan was active in that regard prompts the idea that this may have been in whole or in part the motivation for her discharge. However, in Rowan's case, unlike Jackson's case, such an inference would be strained. Jackson was a top performer. Rowan was not. The reasons advanced to justify Jackson's termination were vulnerable. Not so in Rowan's case. Certainly, the quitting of the other part-time stock employee was not contrived. Nor can the business judgment to replace two part-time stock employees with one full-time stock employee be challenged. Indeed, this is precisely what was done.

Under all the circumstances and notwithstanding the fact that Respondents may have welcomed the termination of an active union adherent, I find inadequate evidence to establish that Rowan's union activities played a role in her termination. Accordingly, I conclude and find that a violation of Section 8(a)(3) or (1) of the Act with respect to the discharge of Rowan has not been established.

3. Joseph Frezza [9]

Joseph Frezza was hired as a part-time stock employee at the Universal Mall store in March 1973 and remained in that position until May 1973. The only other employee at that store who did stock work exclusively was James Bromm who had been hired a

[9] As indicated at the outset, the legality of the discharge of Joseph Frezza was not in issue at the initial stages of this proceeding. It became an issue when a new complaint was issued and by order of the Board consolidated with the earlier proceeding.

month before Frezza and was also a part-time employee. Frezza was discharged a few days after the May 10 election at the Universal Mall Store.

General Counsel takes the position that Frezza was discharged and later refused reinstatement because he engaged in Union and other protected activities. In that regard the record establishes, and I find, that Tlumak, the Universal Mall store manager, and President Klinsky also, had strong reasons to believe that Frezza was a union adherent.[10] Certainly this belief, against the background of Respondent's demonstrated animosity towards unionization, affords basis for speculation that Frezza's discharge may have been motivated by his union sympathies.

On the other hand, there is undisputed evidence, which I credit, that the discharge took place around Mother's Day, that there is a normal seasonal business decline in the volume of goods shipped into the store during this period because the store has been fully supplied with stock for the new season, and that there was not enough work during the Mother's Day period to warrant the retention of the two stock employees.

Frezza was the junior employee of the two in terms of seniority and he was scheduled for layoff. The testimony of both Tlumak and Frezza is in accord that Tlumak told Frezza he was being let go because of a shortage of work and that Tlumak would recall

[10] It is unnecessary to recapitulate here the discussions between Tlumak and Frezza and between Klinsky and Frezza which provide the basis for this finding.

him when his further services were required. No claim was or is made that Frezza's work was unsatisfactory. Both Frezza and Bromm were regarded as satisfactory workers.

Bromm, the other part-time stockboy, quit his employment voluntarily about a month after Frezza was let go. For more than a month thereafter the store had no stockboys and what stock work had to be done was done by other employees and by Tlumak himself. Tlumak did not seek to recall Freeza because, as Tlumak testified, he had been informed by one of the other employees that Frezza was already working elsewhere. Tlumak made no effort to verify this report. But he did call Martin Felder, personnel director for Alberts, about finding a replacement to do the stock work. The result of discussions with Felder was that a determination was finally made not to replace the two part-time stockboys at all but, instead, to hire one full-time maid. The reason for this decision was that a full-time maid could do much of the stock work and, in addition, service the ladies' fitting rooms and lounges, a function male employees could not perform. The use of a maid instead of stockboys had already been applied in other stores in the Alberts chain.

Tlumak followed this procedure. A full-time maid was hired. No stockboys have since been hired to replace either Frezza or Bromm.

In this state of the record it is urged, nonetheless, that the real reason for discharging Frezza was be-

cause of Respondent's antipathy to his union sympathies and that, even assuming an otherwise valid business reason for the termination, if the evidence warrants a determination that Frezza's Union activities entered to any extent into the discussion to discharge him, that discharge is violative of the Act. Additionally, it is argued that even if Frezza's discharge was lawful the failure to recall him and the ready acceptance, without verification, of the report that Frezza was working elsewhere were prompted by Frezza's known union sympathies and hence a finding of unlawful refusal to reinstate is called for.

These contentions, if supported by the evidence, certainly have warrant in the law. But in my view here, as in the case of Deborah Rowan, while the record certainly affords ground for suspicion, the burden of proof which lies on General Counsel has not been fulfilled. It is undisputed that there was a shortage of stock work at the time of Frezza's termination and he was the junior of the two stockboys, both of whom, as Respondents concede, were satisfactory employees. The later choice to replace both part-time stockboys with one full-time maid had valid business reasons to support it and was a procedure previously adopted by Alberts in other stores. Tlumak's failure to recall Frezza when Bromm quit, or to seek to verify the report that Frezza was working elsewhere, might be blameworthy but there is insufficient probative evidence to establish that this failure and omission were attributable to Frezza's union activities or sympathies. Mere suspicion is not enough.

In sum, I conclude and find that the record does not establish by a preponderance of the evidence that the discharge of Frezza and the refusal to reinstate him were violative of Section 8(a)(3) and (1) of the Act.

F. Respondents' Refusal to Bargain and to Furnish Relevant Information

As already noted herein, the Union was certified on July 2, 1973, as the exclusive bargaining representative of Respondents' employees at the Universal Mall store comprising an appropriate unit as hereinbefore described. Following that certification the Union requested Respondents to bargain concerning those employees and also made a request that Respondents furnish the Union with relevant data concerning the wages, hours, and other terms and conditions of employment of those employees. Respondents admit that they denied both requests.

The issue is purely one of law. The certification establishes the legal obligation of Respondents to respond affirmatively to both requests. Respondents do not question this proposition of law, but they urged at the instant hearing that the certification was invalid and hence that they had no lawful obligation to bargain or to furnish the information sought. Respondents predicate this defense on two grounds: (1) that the unit certified was not an appropriate unit; and (2) that Respondent's objection to the election, based on the Union's preelection promise to waive initiation fees if the Union became the bargaining representative, was erroneously rejected.

With respect to the first ground, the record shows that the Regional Director found a single-store unit as hereinbefore described appropriate and the Board thereafter denied Respondents' request for review of that determination because no substantial issue warranting review was presented. Respondents present no newly discovered evidence relevant to that determination but merely repeat their position, previously litigated in the representation hearing, that the unit described is not appropriate. Respondents acknowledge their awareness of the well-settled rule against relitigation of representation issues in subsequent 8(a)(5) proceedings but assert that there are special circumstances here present which warrant relitigation. Respondents adduce no showing of special circumstances to support this naked assertion. The Board's prior determination is binding on me. The objection based on the inappropriateness of the unit is rejected.

The second ground on which Respondents rely is their claim that the May 10 election was tainted because the Union promised in its preelection propaganda to waive initiation fees if the Union became the bargaining representative. In that respect, too, the Regional Director in the representation proceedings had found Respondents' claim to be without merit and Respondents' request for review was again denied by the Board for want of a substantial issue.

The rule barring relitigation of representation issues, previously described, would normally be ap-

plicable here also. However, in the instant case between the close of the first phase of the hearing herein and the reopened phase of the hearing, the Supreme Court on December 17, 1973, issued a decision in *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270. Respondents now rely on that decision to renew their objection that the Union acted improperly in offering a waiver of initiation fees and have filed a "Motion to Dismiss 8(a)(5) charge." General Counsel, in turn, has filed a response opposing that motion.

Analysis of the *Savair* decision, in my view, gives no support to Respondents' contention. The question presented in Savair was "whether the Board properly concluded that a union's offer to waive initiation fees for all employees who sign union authorization cards *before a Board representation election,* if the Union wins the election, does not tend to interfer with employee free choice in the election." *Id.* at fn. 4. The Supreme Court held, contrary to the Board, that such conduct did tend to interfere with a free election. It is this holding on which Respondents rely for support of their motion to dismiss the refusal-to-bargain allegations.

It appears, however, that Respondents overstate the *Savair* holding when they argue that the Supreme Court "held that a promise of waiver of initiation fees by a union is coercive and taints election results." As shown by the question presented and by the majority opinion, the gravamen of the offense in *Savair* in the Court's view lay in the fact that the union gave a

special inducement to those employees, *and those employees only,* who signed authorization cards before the election, and that employees who failed to do so could presumably be subject to the payment of initiation fees. The Court read this disparate treatment as having an effect of forbidden interference with the election. Indeed, in the closing paragraph of footnote 4, the Court suggests that the situation in *Savair* itself could have been remedied by making the waiver of initiation fees "available not only to those who have signed up with the union before an election but also to those who join after the election." That was precisely the situation in the instant case.

In the instant case there was no disparate treatment. If the Union lost the election, none would be required to pay initiation fees; if the Union won the election, none would be required to pay initiation fees. Indeed, the evidence submitted revealed that this was the Union's policy not only in the instant organizational campaign but in all instances where the Union was the beneficiary of a certification. In these circumstances, I find no basis for a finding that the Union's conduct in telling the employees before the election that their initiation fees would be waived in any way tainted the May 10 election.[11]

[11] I deem it unnecessary, in view of the discussion in the text, to consider the argument that the instant case where the employees chose the Union by a substantial margin is further distinguishable from *Savair* where the Court repeatedly notes that the union's victory there was by a single vote.

Accordingly, I conclude and find that the objection based on the Union's waiver of initiation fees is without merit and that Respondents' motion to dismiss the allegations of Section 8(a)(5) should be, and hereby is, denied. I find further that the valid certification here issued created a lawful bargaining obligation binding on Respondents and that Respondents' admitted failure to bargain and to furnish wage and other relevant data concerning the employees in the appropriate unit violated Section 8(a)(5) and (1) of the Act.

This holding is dispositive of the matter and makes it unnecessary to deal at any length with General Counsel's alternative contention that, even absent a valid certification, a bargaining order is warranted here under the guidelines set forth in *N.L.R.B. v. Gissel Packing Co.* 395 U.S. 595 (1969). In sum, it is General Counsel's position that the broad pattern of unfair labor practices engaged in by Respondents justifies a bargaining order here even without an election. In this connection, General Counsel cites the Board's recent decision in *Joseph J. Lachniet, d/b/a Honda of Haslett,* 201 NLRB 855 (1973). In that case the Board issued a bargaining order notwithstanding that a prior election which the union won had been set aside, in part because of improper conduct by a union observer.

What General Counsel overlooks, however, is that the record in *Lachniet* contains an independent showing of majority status which is based on valid authorization cards, and hence reliance on the results of the

election to demonstrate majority status was unnecessary. In these circumstances the Board concluded that the gravity and pervasiveness of the employer's unfair labor practices warranted a bargaining order.

This case is quite different. The record here contains no independent evidence, and General Counsel tendered none, to show that the Union was the designated choice of the majority of the employees in the appropriate unit. That showing derives only from the results of the election. Assuming, *arguendo*, that the election was tainted, as Respondents argue, not only would the certification flowing from the election be invalid, but so, too, would any showing of majority predicated on that election. General Counsel cites no case, and I am aware of none, in which the Board has issued a bargaining order where the majority status of the bargaining representative has not been established. I find General Counsel's alternative basis for a bargaining order without basis in the record.

Conclusions of Law

1. Alberts, Inc., and Detroit Shoe Company are, and have been at all times relevant here, joint employers of the employees in those stores of Alberts, Inc., in the Greater Detroit Metropolitan area in which the Detroit Shoe Company has selling locations.

2. Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, is, and has been at all times here relevant, the exclusive bargaining representative of all full-time and regular

part-time selling and nonselling employees employed by Alberts, Inc., at its Universal City Shopping Center Store, including employees of Detroit Shoe Company, but excluding professional employees, guards and supervisors as defined in the Act.

3. By engaging in surveillance of a union meeting at Froling Bowling Lanes on or about May 4, 1973, Respondents violated Section 8(a)(1) of the Act.

4. Respondents did not engage in unlawful surveillance at the Four Vees Lounge on or about April 12, 1973.

5. By granting wage increases to employees to dissuade them from supporting the Union and to influence their votes in a forthcoming election, Respondents violated Section 8(a)(1) of the Act.

6. By coercively interrogating employees by threats and promises of benefit, by creating the impression of surveillance of Union activities, and by soliciting employees to submit their grievances to management and not to the Union, all to the end of discouraging unionization, Respondents violated Section 8(a)(1) of the Act.

7. By promulgating and publishing an otherwise valid no-solicitation rule for the purpose of interfering with the employees' right of self-organization, Respondents violated Section 8(a)(1) of the Act.

8. By unilaterally changing working conditions of employees following an election in which the employees following an election in which the employees designated the Union as their bargaining representa-

tive, Respondents violated Section 8(a)(1), (3), and (5) of the Act.

9. By discharging and refusing to reinstate employee Rose Jackson because she engaged in union activities, Respondents violated Section 8(a)(3) and (1) of the Act.

10. The preponderance of the evidence does not warrant a finding that Respondents violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate employees Deborah Rowan and Joseph Frezza.

11. By refusing to bargain collectively with the certified Union upon request and by rejecting the Union's request for information as to wages and other relevant data concerning the employees which the Union represented, Respondents violated Section 8(a)(5) and (1) of the Act.

12. The unfair labor practices found herein affect commerce within the meaning of Section 2(6) and (7) of this Act.

REMEDY

To effectuate the policies of the Act and to enforce its mandate, I will direct Respondents to cease and desist from the several unfair labor practices found. Because of the varied character and broad scope of these unfair labor practices, a broad remedial order is warranted and I shall direct that Respondents cease and desist from trenching in any manner upon the rights guaranteed their employees under Section 7 of the Act.

Appropriate affirmative action will also be directed. In respect to Rose Jackson, I shall direct that she be reinstated in the manner customarily prescribed by the Board and with no prejudice to any rights, benefits, or privileges she formerly enjoyed. I shall further direct that she be made whole for lost earnings, computed on a quarterly basis with interest at 6 percent as prescribed in *F. W. Woolworth, Co.*, 90 NLRB 289 (1950), and in *Isis Plumbing & Heating Company*, 138 NLRB 716 (1962). The usual provisions regarding recordkeeping, reporting requirements, and notice posting will also be included.

Inasmuch as Respondents here are involved in multistore operations, the problem of the posting of notices is more than routine. Alberts, Inc., has a three-state operation. However, the organizational campaign here was confined to stores in the Greater Detroit metropolitan area and in these circumstances a prudent discretion would counsel against the necessity or propriety of posting notices in Alberts, Inc., stores throughout the three-state area. The record also does not show, with any specificity, to what extent the organizational campaign of the Union and Respondents' campaign affected all 24 stores, which General Counsel alleges and Respondents admit, comprised the Greater Detroit metropolitan area stores. Moreover, it is clear that, as of time of the instant proceedings, Detroit Shoe Company had selling locations in only about 10 of these 24 stores. Nevertheless, insofar as Alberts, Inc., is involved in the commission of

unfair labor practices here found, and its role in that regard is substantial, it is reasonable to infer that this information would have reached employees in all the stores in the Greater Detroit metropolitan area which are geographically quite contiguous. These employees could and would be, quite naturally, apprehensive as to their security against interference with the exercise of their statutory rights to organize and bargain collectively. Accordingly, I deem it appropriate to, and will, direct that the notices herein direct that the notices herein directed be posted in all of the Alberts, Inc., stores located in the Greater Detroit metropolitan area.

Nothing in the Order, however, shall be construed as requiring Respondents to withdraw from employees any increases which it unilaterally granted them.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I shall recommend the following:

ORDER [12]

Respondents Alberts, Inc., and Detroit Shoe Company, their officers, agents, successors, and assigns, shall:

[12] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Engaging in surveillance of employees in the exercise of their rights to self-organization as guaranteed in Section 7 of the National Labor Relations Act, as amended.

(b) Granting wage increases to employees to discourage their union or other protected activities.

(c) Coercively interrogating employees concerning their union or other protected activities.

(d) Threatening, or promising benefits to, employees in derogation of the rights guaranteed them in Section 7 of the Act.

(e) Creating the impression among the employees that their union or other protected activities are under surveillance by management.

(f) Soliciting employees to bypass the Union in their presentation of grievances and to bring their grievances directly to management.

(g) Promulgating and enforcing a no-solicitation rule for the purpose of interfering with organizational rights of employees.

(h) Unilaterally changing working conditions of employees without consulting or bargaining with the designated representative of the employees.

(i) Discouraging membership in Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, or in any other labor organization, by discharging or otherwise discriminating against any person in regard to hire or tenure of employment or any term and condition of employment.

(j) Refusing to meet and bargain collectively concerning wages, hours, and other terms and conditions of employment with the above-named Union as the exclusive bargaining representative of all the employees comprising the unit described hereunder:

> All full-time and regular part-time selling and nonselling employees employed by Alberts, Inc., at its Universal City Shopping Center Store, including employees of Detroit Shoe Company, but excluding professional employees, guards and supervisors as defined in the Act.

(k) Refusing to furnish data requested by the above-named Union relating to wages, hours, and other terms and conditions of employment of the employees comprising the above-described unit.

(l) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Offer Rose Jackson immediate reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to her seniority or other rights and privileges, and make her whole for lost earnings in the manner set forth in the portion of this Decision entitled "Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records, and reports, and all other records necessary to compute the amount of lost

earnings due Rose Jackson under the terms of this Order.

(c) Rescind the rule against solicitation herein found to have been discriminatorily promulgated and enforced, and expunge from the personnel records of Rose Jackson any reference to warnings or reprimands directed to her for violation of this rule.

(d) Upon request, bargain collectively with the above-named labor organization as the exclusive bargaining representative of the employees in the unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(e) Upon request furnish the above-named labor organization with appropriate data concerning wages, hours, and other terms and conditions of employment of the employees comprising the appropriate unit described above.

(f) Post at all Alberts, Inc., stores in the Greater Detroit metropolitan area copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being duly signed by authorized representatives of Respondents, shall be posted by Respondents

[13] In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals, the word in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 7, in writing, within 20 days of the date of this Order, what steps Respondents have taken to comply wherewith.

IT IS ALSO ORDERED that the complaint herein be dismissed insofar as it alleges unfair labor practices not found herein.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT engage in surveillance of your activities with respect to your right to organize and bargain collectively or to refrain therefrom.

WE WILL NOT create the impression that we are engaging in such surveillance.

WE WILL NOT grant wage increases to discourage union or other protected activities.

WE WILL NOT question you concerning union matters.

WE WILL NOT threaten, or promise benefits to, you in derogation of your right to organize and bargain collectively, or to refrain therefrom.

WE WILL NOT solicit you to bypass your bargaining representative in the presentation of grievances and to bring your grievances directly to us.

WE WILL NOT promulgate or enforce a no-solicitation rule for the purpose of obstructing your organizational and collective-bargaining rights.

WE WILL NOT unilaterally, and without consulting with your bargaining representative, change your working conditions.

WE WILL NOT discharge or otherwise discriminate against any of you to discourage you from engaging in union activities.

WE WILL offer Rose Jackson her old job back and we will pay her for earnings she lost as a result of her discharge.

WE WILL expunge from Rose Jackson's record any reference to violation of our no-solicitation rule.

WE WILL meet and bargain upon request with Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, as the exclusive bargaining representative of all our employees included in the description below about their wages, hours and working conditions and, if agreement is reached, we will sign such an agreement.

The bargaining unit is:

> All full-time and regular part-time selling and nonselling employees employed by Alberts, Inc., at its Universal City Shopping Center Store, including employees of Detroit Shoe Company, but excluding professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish data to the above-named labor organization relating to wages, hours, and other terms and conditions of employment of the employees covered in the above description.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in your rights guaranteed by Section 7 of the National Labor Relations Act as amended.

ALBERTS, INC.,
(Employer).

Dated By
(Representative) (Title).

DETROIT SHOE COMPANY,
(Employer).

Dated By
(Representative) (Title).

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313–226–3210.

U.S. GOVERNMENT PRINTING OFFICE: 1977